IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

C.R.P.(PD) NO.2871 OF 2003
AND
C.M.P.NO.21567 OF 2003

1. A. Mohan
2. Violet
3. Anbu Abraham Lincon .. Petitioners

-Vs-

1. Natesan
2. Ravi
3. Ramesh
4. Raghu .. Respondents

This civil revision petition is preferred under Article 227 of the Constitution of India against the order and decretal order of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur dated 3 .11.2003 passed in IA No.247 of 2003 in OS No.70 of 1999.

!For Petitioners : Ms.S.Thamizharasi

^For Respondents : No appearance

:ORDER

Aggrieved over the order of the learned Additional District Munsif, Ambur dismissing the application for appointment of an Advocate Commissioner for the examination of the witnesses in a suit pending trial, the plaintiffs have brought forth this civil revision petition.
2. Despite service of notice, the respondents have not appeared.
From a perusal of the available materials and the submissions made, it could be seen that it was a suit for declaration and injunction and P.W.1 was also examined. At that juncture, the instant application was filed for appointment of an Advocate Commissioner under Order 26 Rule 4 CPC for the examination of three witnesses, namely Durai, Thangaraj and Munusamy aged about 80, 57 and 60 years respectively on the ground that they were sick and they could not come to Court to give evidence. It was seriously opposed to by the opposite party. The lower court, considering the rival submissions and scrutiny of the materials available, has dismissed the application. Hence, this revision has been brought forth.

3. The learned counsel for the revision petitioners would submit that the witnesses, who were sought to be examined, were sick and in view of the same, the plaintiffs were compelled to file an application for the appointment of the Advocate Commissioner. The lower court has clearly pointed out in its order that in order to substantiate the fact that they are physically ill and sick, no documentary evidence from any medical officer was filed, and apart from that out of three witnesses, two were aged about 57 and 60 years. In the absence of any documentary evidence to substantiate the same, the order of the lower court has got to be affirmed. Now, the suit is also pending trial. Under the stated circumstances, while dismissing the civil revision petition, the lower court is directed to examine the witness, namely Durai, who is aged about 80 years, and record his chief and cross examination on the consecutive days without causing any delay and dispose of the matter as expeditiously as possible. This civil revision petition is dismissed accordingly. No costs. Consequently, connected CMP is closed.

Index : Yes
Internet : Yes

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To

The Addl. District Munsif-cum-
Judicial Magistrate, Ambur

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